

**Missouri-Illinois Roof Systems, Inc. and United  
Union of Roofers, Waterproofers and Allied  
Workers Local No. 20. Case 17-CA-15419**

August 21, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union, the General Counsel of the National Labor Relations Board issued a complaint on March 4, 1991, against Missouri-Illinois Roof Systems, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although the Respondent did not file a timely answer to the complaint, it did submit a signed settlement agreement which was received by the Regional Office on April 8, 1991. The informal settlement agreement was approved by the Regional Director for Region 17 on May 15, 1991.

After numerous attempts to secure the Respondent's compliance with the informal settlement agreement, on March 19, 1992, the Regional Director issued an order revoking approval of, vacating, and setting aside settlement agreement and complaint and notice of hearing. Although properly served with a copy of the order revoking approval and the complaint and notice of hearing, the Respondent has failed to file an answer.

On July 20, 1992, the General Counsel filed a Motion for Summary Judgment. On July 22, 1992, the Board issued an order transferring the proceeding to the Board and a notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The Order Revoking Approval and Complaint and Notice of Hearing issued on March 19, 1992, states that unless an answer is filed within 14 days of service, "all the allegations in the Complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated May 20, 1992, notified the Respondent that unless an answer was received by

May 29, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a Missouri corporation, with an office and place of business in Kirkwood, Missouri, has been engaged in the construction industry as a roofing contractor. During the calendar year ending December 31, 1990, the Respondent performed services valued in excess of \$50,000 in States other than the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All workmen in the roofing trade in Kansas City and vicinity including the following counties in Kansas and Missouri: Kansas—Leavenworth, Wyandotte, Johnson, Miami, Linn, Anderson, Franklin, Douglas and Jefferson; Missouri—Bates, Benton, Carroll, Cass, Cedar, Clay, Chariton, Jackson, Johnson, Lafayette, Petis, Platte, Ray, Saline.

About 1982, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the employees in the unit by entering into successive collective-bargaining agreements with the Union, the most recent of which was effective by its terms for the period June 5, 1989, to May 31, 1991, without regard to whether the majority status of the Union had ever been established under the provisions of Section 9 of the Act.

For the period June 5, 1989, to May 31, 1991, based on Section 8(f) of the Act, the Union has been the limited exclusive collective-bargaining representative of the employees in the unit within the meaning of Section 9(a) of the Act.

About July 22, 1990, the Respondent failed to continue in full force and effect all the terms and

conditions of the 1989–1991 agreement by (a) failing to make payments into the local union pension fund, the national pension fund, the health welfare fund, the apprenticeship fund, and the vacation fund; and (b) failing to deduct union membership dues from employees and remit them to the Union.

The Respondent engaged in this conduct without the consent of the Union. The terms and conditions of employment which the Respondent failed to continue in full force and effect are mandatory subjects for the purpose of collective bargaining. By failing and refusing to bargain collectively with the limited exclusive representative of its employees within the meaning of Section 8(d) of the Act, the Respondent has violated Section 8(a)(1) and (5) of the Act.

#### CONCLUSION OF LAW

By its failure and refusal to bargain in good faith with the Union since July 22, 1990, and by its failure to honor all the terms of its 1989–1991 collective-bargaining agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required payments for pension, health and welfare, apprenticeship, and vacation, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We shall also order the Respondent to deduct union dues as required by the 1989–1991 agreement and remit these dues to the Union.

#### ORDER

The National Labor Relations Board orders that the Respondent, Missouri-Illinois Roof Systems, Inc., Kirkwood, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to honor its 1989–1991 collective-bargaining agreement with the United Union of Roofers, Waterproofers and Allied Workers Local No. 20 by failing to make payments into the local union pension fund, the national pension fund, the health welfare fund, the apprenticeship fund, and the vacation fund; and failing to deduct union membership dues from employees and remit them to the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms of the 1989–1991 collective-bargaining agreement including making all required payments to the local union pension fund, the national pension fund, the health welfare fund, the apprenticeship fund, and the vacation fund and deduct union membership dues from employees and remit them to the Union.

(b) Make unit employees whole in the manner set forth in the remedy section of this Decision and Order by reimbursing them for any loss of benefits or other expenses suffered as a result of the Respondent's failure to make the required pension, health welfare, apprenticeship, and vacation fund payments.

(c) Post at its facility in Kirkwood, Missouri, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to honor all the terms of our 1989-1991 agreement with United Union of Roofers, Waterproofers and Allied Workers Local No. 20 by failing to make all required payments to the local Union pension fund, the national pension fund, the health welfare fund, the

apprenticeship fund and the vacation fund and by failing to deduct union membership dues from employees and remit them to the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor all the terms of our 1989-1991 agreement with the Union.

WE WILL make all required payments to the local union pension fund, the national pension fund, the health welfare fund, the apprenticeship fund and the vacation fund and we will deduct union dues from our employees and remit them to the Union.

WE WILL make our unit employees whole by reimbursing them for any loss of benefits or other expenses suffered as a result of our failure to make the required payments for pension, health welfare, apprenticeship, and vacation.

MISSOURI-ILLINOIS ROOF SYSTEMS,  
INC.